

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

PATRICIA FAENGER, ADMINISTRATOR, and MISSOURI VETERANS HOME AT  
ST. JAMES, MISSOURI,

Appellants,

v.

BOBBY PETTY,

Respondent.

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**DOCKET NUMBER WD77223**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 9, 2014

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Daniel R. Green, Judge

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**JUDGES**

Division One: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

Kevin Hall  
Jefferson City, MO

Attorney for Appellants,

Mark E. Moreland  
St. Louis, MO

Attorney for Respondent.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

**PATRICIA FAENGER, ADMINISTRATOR, )  
and MISSOURI VETERANS HOME AT )  
ST. JAMES, MISSOURI, )**

**Appellants, )**

**v. )**

**BOBBY PETTY, )**

**Respondent. )**

**OPINION FILED:  
September 9, 2014**

**WD77223**

**Cole County**

**Before Division One Judges:** Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and Karen King Mitchell, Judges

The Missouri Veterans Home and Patricia Faenger (administrator for the Missouri Veterans Home—St. James) (collectively “MVH”) appeal the circuit court’s affirmance of the Administrative Hearing Commission’s (AHC) order that Bobby Petty, a State of Missouri merit-system employee, be reinstated to her position as Nursing Assistant I. MVH argues that the AHC’s order, finding that MVH failed to meet its burden of proving that there was cause for Petty’s dismissal, was not supported by competent and substantial evidence and was against the overwhelming weight of the evidence.

**AFFIRMED.**

**Division One holds:**

1. Generally speaking, where there is a direct conflict in the testimony, the AHC must make a choice between the conflicting testimony.
2. However, when the commission finds the parties to be equally credible, it has, in effect, declared that the burden-carrying party did not satisfy its burden of proof.

3. Under our standard of review, we are required to defer to the Commission's credibility determinations, even if we would have resolved them differently.
4. Here, there was a conflict in the evidence regarding whether Petty was required to continually update the facility as to whether she would be able to work any of her scheduled shift. Because the AHC apparently resolved this conflict in favor of Petty, and because Petty's failure to call back is not clearly a violation of the facility's attendance policy, we find no error.

**Opinion by: Karen King Mitchell, Judge**

September 9, 2014

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